SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938.

No. 158

PACIFIC EMPLOYERS INSURANCE COMPANY,
Appellant,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA AND KENNETH TATOR.

APPEAL FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA.

STATEMENT AS TO JURISDICTION.

W. N. MULLEN,
GEORGE E. FAULKNER,
Counsel for Appellant.

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IN THE

SUPREME COURT OF THE STATE OF CALIFORNIA

No. 15,785, Original

PACIFIC EMPLOYERS INSURANCE COMPANY,
A CORPORATION,
Appellant,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA AND KENNETH TATOR,
Appellees.

STATEMENT UNDER RULE TWELVE.

This proceeding was originally instituted by appellee Kenneth Tator against Dewey and Almy Chemical Company, a Massachusetts corporation with its principal place of business in Massachusetts and licensed to do business in California, and appellant Pacific Employers Insurance Company, a California corporation, which insured the Dewey and Almy Chemical Company against the obligations imposed upon it by the California Workmen's Compensation, Insurance and Safety Act of 1917, and Amendments thereto (California Statutes 1917, page 831, as amended). Said proceeding was brought before appellee Industrial Accident Commission of the State of California for adjustment of said Kenneth Tator's claim for compensation alleged to be due him as the result of an injury he sustained on October 17, 1935, while working at the Oakland, California, factory of said Dewey and Almy Chemical Company, which injury,

he alleged, arose out of and in the course of his employment with said Dewey and Almy Chemical Company.

Said Kenneth Tator entered into the employ of the Dewey and Almy Chemical Company as a chemical engineer in January, 1930, the contract of employment being made in Cambridge, Massachusetts. At the time of his injury, Mr. Tator was a resident of Massachusetts. His salary was paid to him in that State by the Cambridge, Massachusetts, office of his employer. All the work he performed for his employer was in Massachusetts, except for those occasions when he traveled outside that State at the direction of said employer located in Massachusetts.

Shortly prior to October 17, 1935, while said Kenneth Tator was in the State of New York on a special errand for his employer, he was instructed to report at once to the Oakland, California, factory of his employer in order that he might investigate and perfect the manufacture of a chemical compound, concerning which one of the company's principal customers had complained. He was instructed to wire the Cambridge, Massachusetts, office of the company for directions as to where to go when he had completed the work he was detailed to do in California.

While in California performing this work—and he did no other work there—his salary was paid by the Massachusetts office of his employer and deposited to his account in a bank in that State. His expenses while in California, and the expenses of the trip to California, were paid by his employer.

Mr. Tator had nearly completed his errand in California when he was injured. He remained in California to receive the medical treatment necessitated by his injury and then communicated with his employer in Massachusetts for directions and was instructed to return to Massachusetts.

When Tator made his contract of employment with Dewey and Almy Chemical Company at Cambridge, Massachusetts,

in January, 1930, or at any time thereafter, he did not give said employer written notice that he would claim his right of action under the law of whatever jurisdiction he might receive injury in, in lieu of the law of Massachusetts, which law, in such case, presumes to give to Massachusetts exclusive jurisdiction. (Massachusetts General Laws, Tercentenary Edition, Chapter 152, Sec. 24.) The Oakland, California, factory of Dewey and Almy Chemical Company advanced Mr. Tator some expense money while he was in California, but there was a bookkeeping charge made for part of his services when he was in Massachusetts against the cost of operation of the California Factory, and probably the entire cost of his trip and time to perfect this process would be charged against the California Factory. But this was merely as a bookkeeping charge to determine the cost of operation of the Oakland factory as well as the Massachusetts operations of the company.

Appellee Industrial Accident Commission of the State of California assumed jurisdiction over the claim of appellee Kenneth Tator on the ground that the injury had been sustained in California, and issued its Findings and Award, by the terms of which it held that said Kenneth Tator and said Dewey and Almy Chemical Company were, at the time of the alleged injury and at the time application for adjustment of claim was made, subject to the provisions of the California Workmen's Compensation, Insurance and Safety Act of 1917, and Amendments thereto (California Statutes 1917, page 831, as amended), and awarded said Kenneth Tator the sum of $25 per week for 169 weeks because of permanent disability resulting from said injury, in the total amount of $4,225, together with the cost of all medical and hospital treatment necessary to cure and relieve him from the effects of the alleged injury.

Thereafter a petition for rehearing was filed, objecting to said award on the grounds that the issue of jurisdiction had

been improperly decided, that said Industrial Accident Commission of the State of California did not have jurisdiction in the matter, and that said Kenneth Tator was not entitled to any recovery for said injury under the laws of the State of California.

Said petition for rehearing before the Industrial Accident Commission of the State of California was denied on the 30th day of June, 1936.

Thereafter and within the time provided by law a petition for writ of review was made to the District Court of Appeal of the State of California, First Appellate District, Division Two, and the petition was denied without opinion on the 30th day of September, 1936.

Thereafter and within the time provided by law a petition for hearing before the Supreme Court of the State of California was made and the same was granted. In due course oral arguments were held thereon before said court, and said court affirmed the award of the Industrial Accident Commission of the State of California in favor of appellee Kenneth Tator on January 31, 1938.

The opinion of the Supreme Court of the State of California has not been officially reported but is printed unofficially in 95 California Decisions, at page 107, and in 75 Pac. (2d) 1058, and attached hereto as Exhibit A.

1. The Jurisdiction of the Supreme Court of the United States.

The appellant submits that the Supreme Court of the United States has jurisdiction to review upon appeal the judgment of the Supreme Court of the State of California in this case under the provisions of subdivision (a) of Section 237 of the Judicial Code (U. S. C. A., Section 344 (a)) as amended by Section 1 of the Act of January 31, 1928, Chapter 14 (45 Stat. 54; 28 U. S. C. A., section 861 (a)).

The case is one in which there is drawn into question the validity of the California Workmen's Compensation, Insurance and Safety Act of 1917, and Amendments thereto (California Statutes of 1917, page 831, as amended) on the ground of its being repugnant to the Constitution of the United States, in which the decision of the State of California is in favor of the statute.

In applying the Workmen's Compensation, Insurance and Safety Act of 1917, and amendments thereto, to the injury in question, the Supreme Court of the State of California did not specify the sections of that Act whereunder it sustained the jurisdiction of the Industrial Accident Commission of the State of California, but Section 6(a) * is the specific section of that Act which defines the jurisdictional limits of said Industrial Accident Commission of the State of California.

Specifically, therefore, appellant challenges on constitutional grounds the validity of Section 6(a) of the California Workmen's Compensation, Insurance and Safety Act of 1917, and Amendments thereto, as it has been applied to the injury in this case.

It is settled that the unconstitutional application of a State statute to a particular transaction by the highest court of that State is a ground for review on appeal by the Su-

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* Section 6 (a). "Liability for the compensation provided by this Act, in lieu of any other liability whatsoever to any person, shall, without regard to negligence, exist against an employer for any injury sustained by his employees arising out of and in the course of the employment and for the death of any such employee if the injury shall proximately cause death, in those cases where the following conditions of compensation concur:

"(1) Where, at the time of the injury, both the employer and the employee are subject to the compensation provisions of this act.

"(2) Where at the time of the injury the employee is performing services growing out of and incidental to his employment and is acting within the course of his employment.

"(3) Where the injury is proximately caused by the employment, either with or without negligence * * *."

preme Court of the United States under the statutes of the United States quoted above.

Fiske v. *Kansas*, 274 U. S. 380, 385;
Cudahy Co. v. *Parramore*, 263 U. S. 418, 422;
Ward & Gow v. *Krinsky*, 295 U. S. 503, 510;
Dahnke-Walker Co. v. *Bondurant*, 257 U. S. 282, 288-290;
Eureka Pipe Line Co. v. *Hallanan*, 257 U. S. 265, 270-271;
St. Louis, etc., Ry. Co. v. *Wynne*, 224 U. S. 384, 359.

The claim that the full faith and credit clause of the Constitution of the United States, Article IV, Section 1, has been violated by the decision of the highest court of the State in which a decision in the case can be had, has been sustained as the basis for the exercise of the appellate jurisdiction of the Supreme Court of the United States.

Aetna Life Ins. Co. v. *Dunken*, 266 U. S. 389.

The appellant contends that the imposition of liability for compensation, as provided by the Workmen's Compensation, Insurance and Safety Act of 1917, and Amendments thereto, to the injury alleged herein amounts to a denial of full faith and credit to the Workmen's Compensation Act of the Commonwealth of Massachusetts (Massachusetts General Laws, Tercentenary Edition, Chap. 152), and a violation of Section 905, Revised Statutes (28 U. S. C. A., Section 687-8), and that, as a direct result thereof, the appellant is subjected to pecuniary loss in the sum of $4,225, together with the cost of all medical and hospital treatment necessary to cure and relieve appellee Kenneth Tator from the effects of his alleged injury, where no premium was paid on said Tator's salary to appellant, but was paid to the insurance carrier in Massachusetts, where his payroll was carried.

This question was raised before the Industrial Accident Commission of the State of California at the very institution of said proceedings therein. It was presented in the petition for writ of review made to the District Court of Appeal, First Appellate District, Division Two, and in the petition for hearing in the Supreme Court of the State of California, in the oral arguments therein, and finally in the petition for rehearing after *per curiam* decision by said Court. It was contended in all instances that for the Industrial Accident Commission of the State of California to assume jurisdiction is to deny to the laws of the Commonwealth of Massachusetts the full faith and credit required by the Constitution of the United States, and to ignore and refuse to adhere to previous decisions of the Supreme Court of the United States and of other courts.

Bradford Electric Light Co. v. *Clapper,* 286 U. S. 145;
Cole v. *Industrial Commission,* 353 Ill. 415, 187 N. E. 520.

II. The State Statute, the Validity of Which Is Involved.

The statute of the State of California, the validity of which is drawn in question by the judgment of the Supreme Court of the State of California from which this appeal is taken, is the California Workmen's Compensation, Insurance and Safety Act of 1917, and Amendments thereto (California Stats. 1917, page 831, as amended). The section of the Act material to this case provides:

> "Section 6 (a). Liability for the compensation provided by this act, in lieu of any other liability whatsoever to any person, shall, without regard to negligence, exist against an employer for any injury sustained by his employees arising out of and in the course of the employment and for the death of any such employee if the injury shall proximately cause death, in those cases

where the following conditions of compensation concur:

"(1) Where, at the time of the injury, both the employer and employee are subject to the compensation provisions of this act.

"(2) Where, at the time of the injury, the employee is performing service growing out of and incidental to his employment and is acting within the course of his employment.

"(3) Where the injury is proximately caused by the employment, either with or without negligence * * *."

The provisions of the Workmen's Compensation Act of the Commonwealth of Massachusetts (Massachusetts General Laws, Tercentenary Edition, Chapter 152), the existence or constitutionality or legality of which is denied, are:

"SECTION 24. An employee of an insured person shall be held to have waived his right of action at common law or under the law of any other jurisdiction in respect to an injury therein occurring, to recover damages for personal injuries if he shall not have given his employer, at the time of his contract of hire, written notice that he claimed such right, or, if the contract of hire was made before the employer became an insured person, if the employee shall not have given the said notice within thirty days of notice of such insurance. An employee who has given notice to his employer that he claimed his right of action as aforesaid may waive such claim by a written notice, which shall take effect five days after it is delivered to the employer or his agent. The notices required by this section shall be given in such manner as the department may approve."

"SECTION 26. If an employee who has not given notice of his claim of common law rights of action, under section twenty-four, or who has given such notice and has waived the same, receives a personal injury arising out of and in the course of his employment, or arising out of an ordinary risk of the street while actually engaged,

with his employer's authorization, in the business affairs or undertakings of his employer, and whether within or without the commonwealth, he shall be paid compensation by the insurer, as hereinafter provided, if his employer is an insured person at the time of the injury; provided, that as to an injury occurring without the commonwealth he has not given notice of his claim of rights of action under the laws of the jurisdiction wherein such injury occurs or has given such notice and has waived it. For the purposes of this section, any person while operating or using a motor or other vehicle, whether or not belonging to his employer, with his employer's general authorization or approval, in the performance of work in connection with the business affairs or undertakings of his employer, and whether within or without the commonwealth, and any person who, while engaged in the usual course of his trade, business, profession or occupation is ordered by an insured person, or by a person exercising superintendence on behalf of such insured person, to perform work which is not in the usual course of such trade, business, profession or occupation, and, while so performing such work, receives a personal injury, shall be conclusively presumed to be an employee."

III. The Date of the Judgment Sought to Be Reviewed.

The judgment of the Supreme Court of the State of California, which affirmed the award of appellee Industrial Accident Commission of the State of California, was entered January 31st, 1938. The Petition for Rehearing was denied February 28th, 1938, and the judgment, therefore, became final on March 3, 1938. (Rule 30, Sec. 1, of Rules of the Supreme Court of California).

Dated May 2d, 1938.

W. N. MULLEN,
GEORGE C. FAULKNER,
Attorneys for Appellant.

EXHIBIT A.

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA.

IN BANK.

S. F. 15,785.

PACIFIC EMPLOYERS INSURANCE COMPANY, Petitioner,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA and KENNETH TATOR, Respondents.

The petitioner by this proceeding for review, seeks to annul an award of compensation made by the Industrial Accident Commission upon the ground that at the time the employee was injured, he was subject to the Workmen's compensation law of Massachusetts. The defense of the insurer is that Massachusetts has exclusive jurisdiction of the controversy.

Dewey & Almy Chemical Company is a Massachusetts corporation, licensed to do business in California. Its principal offices are in Cambridge, Massachusetts, and one of its several factories is at Oakland, California. The business of the company is managed by its executive officers in Massachusetts and a research laboratory is maintained there.

Kenneth Tator, the injured employee, formerly lived in Portland, Oregon. He left there to attend Massachusetts Institute of Technology, from which he graduated. Since January, 1930, he has been employed by the Dewey & Almy Company as chemical engineer and research chemist. The contract of employment (which is in writing but does not appear in the record) was made in Cambridge, and Mr. Tator has worked there in the company's research laboratory except at various times when he has been sent elsewhere on company business.

In September, 1935, one of the principal customers of the company made a complaint about a chemical compound manufactured at the Oakland plant. Following a confer-

ence in New York between officers of the company and this customer, the company's general manager ordered Mr. Tator, then at the laboratory in Cambridge, to go to Oakland and investigate the situation. Mr. Tator did so, and suggested several changes in the machinery of the plant. The evidence shows that he made written reports from time to time concerning his work. These reports were addressed to the manager of the Oakland plant, but copies were sent to the Home Office in Cambridge and Mr. Tator received comments and suggestions from his superiors there.

It is clear that throughout this time he was subject to the control and direction of the officers of the company at Cambridge, although his method of procedure was subject to the approval of the manager of the Oakland factory, who assigned him a place to work, named men to assist him, and had limited authority to accept or reject the suggestions he made regarding changes in equipment. However, these were matters of detail. Mr. Tator had been sent to Oakland to find out why the company's product manufactured there did not meet requirements, and to remedy the difficulty. His status in California is defined very clearly by his own testimony. Speaking of the trouble at the Oakland plant, he said: "I was brought out there to solve the thing by my technical knowledge if I could. * * * I was advising the Oakland branch from a technical standpoint. * * * When I had found the trouble and rectified it, I was to * * * notify Cambridge and await orders. * * * There was no thought of staying out here permanently."

While he was in California Mr. Tator remained on the payroll of the company in Massachusetts and his salary as it accrued was deposited to his account in a bank in Massachusetts. He was given an advance before he left Cambridge to meet his traveling and other expenses in California, and a further sum was advanced to him by the Oakland office. At the time of the hearing these expenses had been billed to the Oakland office and the local manager understood that a charge would later be made for Mr. Tator's salary while he was in California.

At the time of Mr. Tator's injury, the Dewey and Almy Chemical Company carried workmen's compensation insur-

ance covering its operations in Massachusetts and also in California. The Hartford Accident and Indemnity Company insured it by a policy under which the obligations of the insurer include the workmen's compensation law of Massachusetts (G. L. Ter. Ed., C. 152) "and none other". This policy names Cambridge and Walpole, Massachusetts, as the location of all work places of the employer. A policy issued by the petitioner insured the chemical company against the obligations imposed by the California Workmen's Compensation, Insurance and Safety Act of 1917 (Stats. 1917, p. 831, as amended) and names the workplaces of the employer as the factory in Oakland "and elsewhere in the State of California".

After being injured, Mr. Tator made an application to the Industrial Accident Commission of California for compensation, naming Dewey & Almy Chemical Company as his employer and the petitioner as the employer's insurance carrier. The latter filed an answer denying the jurisdiction of the commission to determine the claim for the reason that he was an employee of Dewey & Almy Chemical Company in its operations in the state of Massachusetts and was not covered by the workmen's compensation insurance policy of the petitioner. It is further alleged "that the applicant is a resident of the State of Massachusetts and entered his employment therein, and not having rejected the extra territorial effect of the Workmen's Compensation Act of the State of Massachusetts, thereby did elect, in the event of injuries sustained by him outside the confines of the State of Massachusetts, to accept the benefits of said State, and such an agreement was a part of his contract to hire."

Prior to the hearing the Hartford Company was joined as a defendant. The commission found that Mr. Tator sustained injury at Oakland, California, while employed as a chemical engineer "by the Pacific factory of the Dewey & Almy Chemical Company, a Massachusetts corporation". It determined that this injury caused permanent disability which it rated at 42¼ per cent of total, and awarded compensation therefor against the petitioner. It also found that the Hartford Accident & Indemnity Company was not the

insurance carrier of the employer and dismissed it and the employer from all liability.

The workmen's compensation law of Massachusetts provides: "An employee of an insured person shall be held to have waived his right of action at common law or under the law of any other jurisdiction in respect to an injury therein occurring, to recover damages for personal injuries if he shall not have given his employer, at the time of his contract of hire, written notice that he claimed such right, • • •. If an employee who has not given notice of his claim of common law rights of action, under section twenty-four, or who has given such notice and has waived the same, receives a personal injury arising out of and in the course of his employment, or arising out of an ordinary risk of the street while actually engaged, with his employer's authorization, in the business affairs or undertakings of his employer, and whether within or without the commonwealth, he shall be paid compensation by the insurer, as hereinafter provided, if his employer is an insured person at the time of the injury; provided, that as to an injury occurring without the commonwealth he has not given notice of his claim of rights of action under the laws of the jurisdiction wherein such injury occurs or has given such notice and has waived it." It is conceded that no notice was given by Mr. Tator pursuant to the provisions of this law, and the petitioner asserts that under such circumstances Massachusetts has exclusive jurisdiction to award compensation for the injury.

In the leading case of *Bradford Electric Light Co.* v. *Clapper*, 286 U. S. 145, an employee of a Vermont corporation was killed while working in New Hampshire. He resided in Vermont and had been employed in that state as a lineman for emergency service either there or in New Hampshire. The accident occurred when he was sent to the New Hampshire substation to make some repairs. The employer, invoking the full faith and credit clause, set up a special defense: It pleaded that the action was barred by the provisions of the workmen's compensation act of Vermont which as in effect at the time of the accident, provides that a workman hired within the state shall be entitled to compensation for an injury received either within or with-

out the state; that "employers who hire workmen within this state to work outside of the state, may agree with such workmen that the remedies under the provisions of this chapter shall be exclusive as regards injuries received outside this state by accident arising out of and in the course of such employment, and all contracts of hiring in this state shall be presumed to include such agreement". The act also stipulates that every contract of employment made within the state shall be presumed to be subject to its provisions unless prior to the accident an express statement to the contrary shall have been made by one of the parties, and that acceptance of the act is "a surrender by the parties * * * of their rights to any other method, form or amount of compensation or determination therefor." Neither the employer nor the employee filed any statement declining to accept any provision of the Vermont act.

In determining that the rights of the employer and the representative of the dead employee were fixed by the law of Vermont and that the action in New Hampshire could not be maintained, the court said: "The administratrix contends that the full faith and credit clause is not applicable. The argument is that to recognize the Vermont act as a defense to the New Hampshire action would be to give to that statute an extra-territorial effect, whereas a state's power to legislate is limited to its own territory. It is true that full faith and credit is enjoined by the Constitution only in respect to those public acts which are within the legislative jurisdiction of the enacting State. (See *National Mutual Bldg. & Loan Assn.* v. *Brahan*, 193 U. S. 635, 647; *Olmstead* v. *Olmstead*, 216 U. S. 386, 395.) But, obviously, the power of Vermont to effect legal consequences by legislation is not limited strictly to occurrences within its boundaries. It has power through its own tribunals to grant compensation to local employees, locally employed, for injuries received outside its borders, compare *Quong Ham Wah Co.* v. *Industrial Accident Com.*, 255 U. S. 445, dismissing writ of error, 184 Cal. 26, 192 Pac. 1021, and likewise has power to exclude from its own courts proceedings for any other form of relief for such injuries. * * * The answer is that such recognition in New Hampshire of the rights created by the

Vermont Act, can not, in any proper sense be termed an extra-territorial application of that Act. * * * The relation between Leon Clapper and the Company was created by the law of Vermont; and as long as that relation persisted its incidents were properly subject to regulation there. For both Clapper and the company were at all times residents of Vermont; the Company's principal place of business was located there; the contract of employment was made there; and the employee's duties required him to go into New Hampshire only for temporary and specific purposes, in response to orders given him at the Vermont office. The mere recognition by the courts of one State that parties by their conduct have subjected themselves to certain obligations arising under the law of another State is not to be deemed an extra-territorial application of the law of the State creating the obligation. Compare *Canada Southern Ry. Co.* v. *Gebhard*, 109 U. S. 527, 536, 537. * * * By requiring that, under the circumstances here presented, full faith and credit be given to the public act of Vermont, the Federal Constitution prevents the employee or his representative from asserting in New Hampshire rights which would be denied him in the State of his residence and employment. * * * The interest of New Hampshire was only casual. Leon Clapper was not a resident there. He was not continuously employed there. So far as appears, he had no dependent there. It is difficult to see how the State's interest would be subserved, under such circumstances, by burdening its courts with this litigation."

In the later case of *Ohio* v. *Chattanooga Boiler Co.*, 289 U. S. 439, the employer was a Tennessee corporation and the dead employee had been a resident of that state and had been hired there. The accident for which compensation was claimed occurred in Ohio. That state, after paying an award of compensation from its insurance fund, brought an original action against the employer to recover the amount of its payment. In defense, the employer relied upon a provision of the Tennessee workmen's compensation law that "the rights and remedies herein granted to an employee subject to this Act on account of personal injury or death by accident shall exclude other rights and

remedies of such employee, his personal representative, dependents or next of kind, at common law or otherwise, on account of such injury or death". However, in giving judgment for Ohio, the supreme court pointed out that this statute, as construed and applied by the highest court of Tennessee, did not preclude recovery under the law of another state "and the full faith and credit clause does not require that greater effect be given the Tennessee statute elsewhere than is given in the courts of that State".

The principles stated in the Clapper case were followed and applied in *Cole* v. *Industrial Commission*, 353 Ill. 415, 187 N. E. 520, 90 A. L. R. 116. There the employee, who was injured while at work in Illinois, was a resident of Indiana and was hired there by contractors who resided and had their principal place of business in that state. The Indiana law provided that the rights and remedies "granted to an employee subject to this act on account of personal injury or death by accident shall exclude all other rights and remedies of such employee, his personal representatives, dependents or next of kin, at common law or otherwise, on account of such injury or death." The court held that as the contract of employment was made in the state of Indiana between parties who were subject to the terms of the workmen's compensation law of that state, the remedy provided by it was an exclusive one.

The more recent case of *Alaska Packers Assn.* v. *Industrial Accident Commission*, 294 U. S. 532, presents another application of the full faith and credit clause. In that case an employee who had been hired in California for seasonal work in Alaska recovered compensation under the California law, in spite of a contract made by him in which he elected to be bound by the law of Alaska. This award was affirmed. At the time of the injury, which occurred in Alaska, the California law provided: "The (industrial accident) commission shall have jurisdiction over all controversies arising out of injuries suffered without the territorial limits of this state in those cases where the injured employee is a resident of this state at the time of the injury and the contract of hire was made in this State * * *." This statute, the court said, came in conflict with the statute of

Alaska, and such a conflict is to be resolved "not by giving automatic effect to the full faith and credit clause, compelling the courts of each state to subordinate its own statutes to those of the other, but by appraising the governmental interests of each jurisdiction, and turning the scale of decision according to their weight."

The case of *De Gray* v. *Miller Bros. Construction Co.*, (Vt.) 173 Atl. 556, also recognizes the public policy of the forum as controlling. The court said that when a person employed in another state is injured in Vermont, its courts, either upon the principles of comity or under the full faith and credit clause, usually will decline to take jurisdiction if the contract of employment does not conflict with the law and public policy of Vermont. But it was held in *Esau* v. *Smith Bros.* (Neb) 246 N. W. 230, that the full faith and credit clause must yield to the public and domestic policy of the state which is asked to enforce the constitutional provision.

In considering the application of these and other cases to the right of Mr. Tator to recover compensation in California, it is important to note that the supreme court of Massachusetts has decided that in the administration of the workmen's compensation law, the industrial accident commission and the courts of that state are not bound by the acts of any other jurisdiction and that a proceeding brought in another state by an employee hired in Massachusetts "has no standing in law." (*Migues' Case*, 281 Mass. 373, 183 N. E. 847; *McLaughlin's Case*, 274 Mass. 217, 174 N. E. 338). In each of these cases an award made in Massachusetts in favor of an employee was sustained notwithstanding the fact that compensation had also been allowed in another state, although the employer was allowed credit for the amount previously awarded. In the Clapper case it was stated that if the action for damages in New Hampshire could be maintained, the plaintiff might get a recovery which would be denied him by the law of Vermont; this also has some bearing upon Mr. Tator's application. Although the proceeding brought by him in California sought an award under the compensation law and is not an action for damages, the scale of compensation benefits is not the

same in all states. If the employee may disregard the law of the state of his residence and employment and assert his rights in another jurisdiction, an employer may be required to pay compensation in an amount different from that for which he would be liable under the lex loci.

(1) Upon the principles which have been stated and applied in these cases, Mr. Tator cannot recover compensation in California unless this state has a governmental interest in the controversy superior to that of Massachusetts. At the time of his injury Mr. Tator was a resident of Massachusetts. He was employed there, and was subject to the direction of officers of the employer there located. His salary was paid to him in that state, and he had come to California only on a specific errand for his employer. Under these circumstances the interest of California, like that of New Hampshire in the Clapper case, supra, is only "casual" unless there are other facts upon which a governmental interest may be based. It is urged that this interest may be found in the medical and hospital expenses which were incurred in this state and had not been paid at the time of the hearing.

(2) The modern view that the cost of industrial injuries is properly a part of the expense of production underlies all workmen's compensation laws. (*Western Ind. Co.* v. *Pillsbury*, 170 Cal. 686). The public has a direct interest in the results of industrial accident. When the injured employee had only a right of action for damages, he too often became an object of charity. Even under present laws the public bears some part of the expense of such accidents in addition to the amount which is added to the cost of manufacture. The public, therefore, is vitally concerned to see that adequate medical care is furnished to those injured. Indeed, the constitutional amendment adopted in 1918 which vested the legislature with plenary power to create and enforce a complete system of workmen's compensation defines such a system as including "full provision for such medical, surgical, hospital and other remedial treatment as is requisite to cure and relieve from the effects of such injury." (Art. XX, Sec. 21.) The workmen's compensation law uses this

same language in prescribing the medical and hospital treatment which an employer must furnish. (Sec. 9a) Even before these enactments this court recognized the important place medical care has in the administration of workmen's compensation when it said: "Compensation means more than a mere cash payment to an individual. Compensation to employees for injuries incurred by them may fairly be said to mean not only a money payment to the employee himself, but provision or indemnification for the various elements of loss which may be the direct result of his injury. It includes, for example, the obligation to provide medical and surgical treatment (Sec. 15, subd. a.)—an obligation which does not necessarily involve payment in cash to the employee himself." (*Western Metals Supply Co.* v. *Pillsbury*, 172 Cal. 407.)

(3) An award for medical expense cannot be made in favor of a physician in a proceeding to which the injured employee is not a party (*Pacific Employers Insurance Co.* v. *French*, 212 Cal. 139), but a physician who has rendered medical aid to a compensable employee may maintain an application to recover the value of his services in a proceeding in which both the employer and employee are named as defendants. Such a physician is a party in interest because an effective administration of the workmen's compensation act both assures and requires adequate medical care and treatment. This court has said: "As a practical matter, injured employees as a class will receive better and more willing medical service if remuneration for such services from an employer or insurance carrier is assured to doctors and hospitals than if instances may arise in which, if an employee neglects to file a claim for compensation, after the services have been rendered, such doctors and hospitals may be required to look only to the injured employee for compensation. It should be borne in mind that the medical, surgical and hospital treatment which is intended to be assured to injured employees as one of the items of their compensation by the act, will be more certain to be furnished if doctors and hospitals are assured of certain remuneration for their services." (*Independence Indem. Co.* v. *Indus. Acc. Com.*, 2 Cal. (2d) 397, 404.)

(4) The public policy of California upon this question has been clearly and positively stated in the Constitution, the workmen's compensation law which was enacted pursuant to it, and the decisions of this court. It would be obnoxious to that policy to deny persons who have been injured in this state the right to apply for compensation when to do so might require physicians and hospitals to go to another state to collect charges for medical care and treatment given to such persons. Under these circumstances the governmental policy of California weighs more heavily in the scale of decision than the law of Massachusetts and the conflict in laws must be resolved in favor of the state where the injury occurred.

The award is affirmed.

EDMONDS, *J.*

We concur:

SHENK, *J.*
CURTIS, *J.*
SEAWELL, *J.*
WASTE, *C. J.*
LANGDON, *J.*

I concur in the judgment.

HOUSER, *J.*